IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.744 OF 1998

Madhuri Prakash Kulkarni)
Adult, Occupation : Service)
R/o Maharashtra Housing & Area)
Development Authority)
Pune-411 001.)..Appellant

Versus

The State of Maharashtra)..Respondents

Shri S.R.Chitnis Senior Advocate i/by Shri S.V. Kotval for the appellant.

Shri S.S.Pednekar, APP for the State.

Coram : R.S.Mohite,J

Date : 6.3.2006.

Judgment :-

1. This is an appeal filed by the accused Sau.Madhuri Prakash Kulkarni impugning a judgment and order passed by the Special Judge, Pune, in Special Case No.6 of 1993, on 19.9.1998, convicting the accused for an offence punishable under Section 7 & 13 (1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. On the basis of such conviction, she has been sentenced to under-go one year R.I. and to pay fine of Rs.500/-, in default to undergo further R.I. of three months for the offence under Section 7 of Prevention of Corruption Act. She was also sentenced to under-go R.I. for one year and to pay fine of

Rs.500/-, in default to under-go R.I. for 3 months for the offence under Section 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988. It has been directed that both the sentences should run concurrently.

2. The brief facts of the prosecution case were as under :-

(a) That the Complainant (PW 1) Ashok Kadam was a peon working in a Ashtang Ayurved College, Sadashiv Peth, Pune. He was educated upto the 5th standard and knew how to read and write. In the year 1991 he came across a newspaper advertisement, offering houses to persons from the low income group. Desirous of getting a house in the scheme, he purchased a blank form from Pune Housing Board and submitted all necessary documents alongwith a bank draft for Rs.5000/-. He made enquiries for a year but did not learn the fate of his application. In the year 1992, lots were drawn at Ahmednagar but the complainant was unsuccesful. He therefore, went to the office of the board and met to the present accused and claimed refund of his money. The accused told him to come after 2/3 days and thereafter on several occasions he was told by her that his cheque has been dispatched by post. The complainant however, did not receive the said cheque and therefore, on 1.10.1993 he went back to meet the accused. Once again he was told by her

that the cheque had been dispatched by post on his residential address. The complainant insisted that his cheque should be given immediately. The accused is said to have told him that if he wanted his cheque immediately, he should pay her Rs.100/- and she would keep aside all her work and prepare his cheque. The complainant told the accused that he has not yet received his salary and therefore, he was unable to pay. Upon this, the accused told him that he should come by 5.00 P.M. on the same day and hand over the said amount and then the work of handing over of his cheque would be done immediately. The accused gave him 2 acknowledgment receipts and asked him to write his name, residential address and to sign on the reverse of the said receipts. Accordingly, the complainant did the same. Accused compared the signature with his original application and informed him that he should come alongwith both the receipts and also alongwith Rs.100/-.

(b) The complainant went to the office of the A.C.B. He met Police inspector PI Bhamre (PW 5), narrated all the facts to PI Bhamre and his complaint was reduced to writing. PI Bhamre called 2 panchas by name Ms.Alpana Navji Tikone and Suresh Govind Dhaybar. He narrated the complaint to the panchas and obtained their signatures on the complaint. A search of the complainant was taken and it was found that he had an amount of Rs.120/- consisting of 2 notes of Rs.50/-

each and 2 notes of Rs.10/- each. Amount of Rs.20/- was returned to the complainant. Thereafter PI Bhamre informed the complainant and the panchas about the use of anthracene powder. A pre-trap panchanama was prepared. Thereafter, anthracene powder was applied on both sides of the two notes of Rs.50/- each. One head constable Mr.Kale then folded the notes and kept on the left side pocket of the complainant's shirt. He was instructed not to touch them. He was further instructed to give a signal to the raiding party after the accused had accepted the notes.

(c) After preparing the pre-trap panchanama PI Bhamre alongwith panchas and complainant came to the office of the accused. Complainant and one panch Alpana Tikone then proceeded towards the office of the accused followed by the raiding party. There the complainant met the accused and asked the accused as to whether his cheque was ready. Accused informed him that his cheque was ready and asked whether he had brought Rs.100/-. When the complainant replied in the affirmative, the accused took one cheque from the drawer of the table and showed the same to the complainant and asked him to write the number and amount of the cheque on the slips. The accused wrote all these details on the 2 receipts. The accused thereafter asked him to put Rs.100 into a register of green colour. The complainant took out Rs.100/- which was on the left side pocket of the shirt by his right

hand and kept the same inside the register. The Complainant folded the register and kept the same on the table near her left hand. The accused thereafter handed over the cheque to the complainant and he kept the same in the left side pocket of his pant. Of the two receipts, one was kept by the accused and other was handed over to the complainant. Complainant came out and gave signal to the raiding party. Raiding party alongwith other panch Dhaybar rushed into the office of the accused. Complainant was asked to wait outside the office and was called inside the office after 45 minutes.

(d) In the meanwhile, on the raiding party entering the office, they accosted the accused and disclosed the purpose for which they had come. One lady constable by name Kadam caught hold of the hands of the accused. As there was light in the hall they proceeded to the cabin of Mr.Ashok Shinde (PW 3) which was an adjacent room. There was darkness created and in the darkness the persons were being examined. At that point of time the panch Alpana Tikone (PW 2) informed the raiding party that the amount was kept in the register. The 2nd panch by name Suresh Govind Dhaybar brought that register from the table of the accused and in that register 2 notes of Rs.50/- were found. These notes were found containing anthracene powder. Anthracene powder was found at a spot between pages 2 & 3 of the register. The register was seized

as (Article-2). The tainted notes were put into an envelope and that envelope was sealed and the signatures of the 2 panchas were put thereon. The fingers of panch Suresh Dhaybar were found containing anthracene powder. It was at this stage, that the complainant was called inside.

(e) The complainant was then examined. Anthracene powder was found on the tip of the finger of his right hand and also in the left side pocket of his shirt. His search was taken and amount of Rs.20/-, one cheque and one acknowledgment receipt were found. The person who was sitting in front of Mrs.Kulkarni by name Shri Ladade was interrogated. As per the complainant, Shri Ladade has been sitting in front of the accused right from the time when demand has been made. Subsequently, post trap panchanama was prepared and after lodging of the formal complaint by (PW-5) PI Rajendra Bhamre, completing the investigation and obtaining a sanction from Vijay Wangikar (PW 4), a charge-sheet came to be filed.

(f) At the time of the trial, prosecution examined 5 witnesses to prove the case against the accused. (PW 1) Ashok Kadam was the complainant, (PW 2) Ms.Alpana Tikone, was the panch, (PW 3) Ashok P.Shinde was a divisional accountant in whose room persons and articles were tested for anthracene powder, (PW 4) Shri V.V.Wangikar was the sanctioning authority and

lastly (PW 5) PI R.M.Bhamre was examined.

(g) The defence of the accused was of total denial. Based upon such record, by the impugned judgment and order the trial Court was pleased to convict and sentenced the accused as aforesaid.

3. I have perused the entire record. In my view, the accused will have to be given benefit of doubt and will have to be acquitted for the reasons mentioned below.

4. As per the evidence of the Complainant the first demand is said to have been made by the accused on 1.10.1992 at 11.30 A.M., when he met her in her office. In his evidence he claims to have told the accused that as he has not received the salary he was unable to pay the amount. The version given by him in his FIR is however, slightly different. In his FIR he states that he has not received the salary and would therefore, obtain the money from his relatives and hand over the same. There is no corroboration to this evidence of the Complainant. It must be born in mind that when the Complainant went to the office of the A.C.B. he was found to have Rs.120/- in his pocket. He does not said in his examination-in-chief that he had the money but did not wish to give the same to the accused because he had decided to file a complaint against her to the A.C.B. As far as this demand is

concerned, I am thus hesitant to place reliance on the same. The 2nd demand is said to have been made by the accused at the time of the trap. It is the complainant's version that accused asked him to put Rs.100/- in the register and at her behest he put the notes in the register. It is admitted by the complainant that one person was sitting opposite the accused. The panch and investigating officer had identified this person who was sitting opposite as one Ladade. It is significant that Ladade has not been examined as a prosecution witness. It is also an admitted position that no anthracene powder was found on the clothes of the accused or on any part of the body of the accused. Nodoubt, the panch also talks about the accused making the demand and asking the Complainant to keep Rs.100/- in the register. Surprisingly, this version is not to be found in the post trap panchanama at all.

5. If really the complainant had kept the 2 notes of Rs.50/- in the register at the request of the accused, it was expected that upon the raiding party being called, he would have told them that the notes have to be found in the register which was on the table of the accused. The complainant does not say that he made any such disclosure to the raiding party. On the contrary, he said that when the raiding party came, he was asked to go out and called back after 45 minutes. The record indicates that after raiding party came,

lady constable caught hold hands of the accused. The natural conduct of panch Tikone who was then present would have been to immediately disclose the raiding party that the money was lying in the register on the table but her evidence indicates that she followed the raiding party to the adjoining room of (PW 3) A.P.Shinde and after the examination of the accused for anthracene powder on her hands, person and clothes, she disclosed that the money was lying in the register in the main hall where the accused had been sitting.

6. Even thereafter, it would have been natural conduct on the part of the investigating officer to send Ms.Alpana Tikone (PW 2) into the hall to get the concerned register because she was the person who has seen the putting of the money in the register. The record indicates that the 2nd panch Suresh Dhaybar who admittedly had no knowledge as to in which register the money had been put, is said to have gone for fetching the said register. The complainant admits in his cross-examination that after the money was put in the register the same was closed by him by both the hands. If that was so, then anthracene powder would have been found on the cover of the register. No such anthracene powder was found during the investigation. Only one acknowledgment receipt was seized by the police and the pen by which entries were said to have been made by the Complainant was also not seized. In

the aforesaid circumstances, making of the demand at the time of the trap as well as the acceptance of bribe amount are both rendered unbelievable and in the circumstances, this is a case where the benefit of doubt can be given to the accused person.

7. In the result, the judgment and order passed by the Special Judge, Pune on 19.9.1998 in Special Case No.6 of 1993 is quashed and set aside and the accused is acquitted of all charges. Fine if any, paid by the accused should be refunded. Appeal stands disposed of finally.

(R.S.Mohite,J)